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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

8 || In Re

No. C-12-5368 EMC (pr)

9 MARCELLUS COOKSEY,

Plaintiff.

## **ORDER OF DISMISSAL**

12 This action was opened on October 17, 2012, when the Court received from Marcellus  
13 Cooksey a letter complaining about the conditions of confinement at the High Desert State Prison.  
14 On that date, the Court notified Mr. Cooksey in writing that his action was deficient in that he had  
15 not filed a complaint and had not filed an *in forma pauperis* application. The Court further notified  
16 Mr. Cooksey that this action would be dismissed if he did not submit a complaint within thirty days.

17 Mr. Cooksey did not file a complaint. Instead, he requested a ninety-day extension of the  
18 deadline to file the complaint, so that he could complete the exhaustion of his administrative  
19 remedies. The problem for Mr. Cooksey is that administrative remedies need to be exhausted before  
20 an action is filed, and his request plainly shows they were not. *See Vaden v. Summerhill*, 449 F.3d  
21 1047, 1051 (9th Cir. 2006) (where administrative remedies are not exhausted before the prisoner  
22 sends his complaint to the court it will be dismissed even if exhaustion is completed by the time the  
23 complaint is actually filed). The request for an extension of time is **DENIED** because he has not  
24 shown cause to grant the extension. (Docket # 6.)

25 There is another problem for Mr. Cooksey: even if he did file a complaint, the Northern  
26 District would not be the correct venue for this action. His letter (Docket # 1) shows that his  
27 concerns are about medical care at High Desert State Prison. High Desert State Prison is in Lassen  
28 County, and therefore within the venue of the Eastern District of California. *See* 28 U.S.C.

1 § 1391(b) (a civil action may be brought in a judicial district "in which a substantial part of the  
2 events or omissions giving rise to the claim occurred"). If and when Plaintiff is ready to file a civil  
3 rights complaint about the conditions of confinement at High Desert State Prison, he should file his  
4 complaint in the U.S. District Court for the Eastern District of California in Sacramento, California.

5 Plaintiff has failed to file a complaint by the deadline. Accordingly, this action is  
6 **DISMISSED** without prejudice for failure to submit a pleading showing the Court has subject  
7 matter jurisdiction. Plaintiff's *in forma pauperis* applications are **GRANTED**. (Docket # 5, # 7.)  
8 The Clerk shall close the file.

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10 IT IS SO ORDERED.

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12 Dated: February 8, 2013

  
13 EDWARD M. CHEN  
14 United States District Judge